

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,)	CIV. 05-4145-KES
)	
Plaintiff,)	
)	
vs.)	ORDER ADOPTING REPORT
)	AND RECOMMENDATION
THREE BANK ACCOUNTS)	
DESCRIBED AS:)	
)	
Bank Account #9142908, at)	
First Bank and Trust,)	
Brookings, South Dakota,)	
)	
Bank Account #106000073, at)	
Minnwest Bank,)	
Ortonville, Minnesota,)	
)	
Bank Account # 111007191, at)	
Far West Bank)	
St. George, Utah,)	
)	
Defendants.)	

On September 19, 2005, the government filed a verified complaint alleging a right to condemnation and forfeiture of the three defendant bank accounts pursuant to 18 U.S.C. § 981(a)(1)(A) and (C). Shortly thereafter, on October 17, 2005, Harvey Dockstader filed a document in response to the government's complaint. Subsequently, on October 9, 2007, Dockstader filed a document entitled Statement of Release in Interest or Right, in which he stated that he had assigned his interest in the property which was the subject of this forfeiture proceeding to Timothy Jewell. Dockstader filed a notice with the court on October 17, 2007, clarifying that he was releasing all interest or

right in any of the property subject to the complaint for forfeiture, and that he had assigned all his claims to Jewell. As a result, on November 19, 2007, Jewell filed a Claim of Right or Title Statement asserting an ownership interest in the Minnesota and Utah bank accounts and on November 30, 2007, Jewell filed a Support of Statement of Interest in Claim.

The government moves to strike Jewell's "Claim of Right or Title Statement of Interest" (Docket 34) as well as his "Support Statement of Interest in Claim" (Docket 39), asserting that Jewell lacked standing to assert a claim in this matter because he did not file a proof of claim within the thirty days of service of the complaint provided for in the applicable rules. Pursuant to 28 U.S.C. § 636(b)(1)(B), the court referred the government's motion to Magistrate Judge Veronica L. Duffy.

On April 1, 2008, Magistrate Judge Duffy submitted her report and recommendation for disposition of this pending motion. The parties were notified in the opinion that they had ten days to file objections to the report. No objections were filed.¹ De novo review is required to any objections that are

¹ The court notes that Jewell filed a document entitled "Response of Claimant Timothy A. Jewell Regarding USA's Response to Court's Order Dated March 10, 2008" (Docket 68) on April 4, 2008. On March 10, 2008, Magistrate Judge Duffy requested the parties to submit supplemental briefing on the government's motion to strike. Jewell filed his supplemental brief on March 27, 2008, and the government filed its supplemental brief on March 28, 2008. Docket 68 appears to be an untimely response to the government's supplemental brief because it contains arguments that directly respond to the government's supplemental brief. Accordingly, the court does not consider this document as an objection to Magistrate Judge Duffy's April 1, 2008, report and recommendation.

timely made and specific. See Thompson v. Nix, 897 F.2d 356 (8th Cir. 1990). Even though no objections were timely filed, the court reviewed the matter de novo and finds that the magistrate judge's report and recommendation will be adopted in full, with the exception of the discussion regarding the interpretation of 18 U.S.C. § 983 and whether statutory standing is a factual or legal question in this case. Such a determination is not required at this time and therefore, the court will defer ruling on this issue until the summary judgment stage.

Now, therefore it is hereby

ORDERED that the report and recommendation of Magistrate Judge Duffy (Docket 59) is accepted in full with the above-mentioned limitation.

IT IS FURTHER ORDERED that the government's motion to strike Documents 34 and 39 (Docket 41) is denied.

Dated May 14, 2008.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
CHIEF JUDGE